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SUBJECT: ~~LETTERS ON THE U.S.-JAPAN AGREEMENT FOR NUCLEAR~~
~~COOPERATION~~

1. SUMMARY: THIS TELEGRAM CONTAINS THE LETTER SENT TO MEMBERS OF CONGRESS FROM DEPUTY SECRETARY WHITEHEAD ON OUR INTENTIONS AND UNDERSTANDINGS WITH REGARD TO THE U.S.-JAPAN AGREEMENT FOR NUCLEAR COOPERATION AND THE LETTER FROM AMBASSADOR KENNEDY TO MINISTER ENDO REGARDING TRANSPORTATION ARRANGEMENTS. END SUMMARY

- THE FOLLOWING LETTER WAS SENT ON MAY 27 FROM THE DEPUTY SECRETARY TO CONGRESSMEN FASCELL, BROOMFIELD, SOLARZ AND LEACH OF THE HOUSE FOREIGN AFFAIRS COMMITTEE AND ~~SENATORS~~ ~~PELL AND HELMS OF THE SENATE FOREIGN RELATIONS~~ COMMITTEE. COPY OF THE LETTER WAS ALSO SENT TO SENATOR CRANSTON:

- ON BEHALF OF THE ADMINISTRATION, I WISH TO CONFIRM A NUMBER OF INTENTIONS AND UNDERSTANDINGS REGARDING THE AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF JAPAN CONCERNING PEACEFUL USES OF NUCLEAR ENERGY AND THE IMPLEMENTING AGREEMENT.

- PLUTONIUM SHIPMENTS PURSUANT TO THE IMPLEMENTING AGREEMENT

- THE ADMINISTRATION WILL NOT ALLOW AIR SHIPMENTS OF PLUTONIUM PURSUANT TO THE IMPLEMENTING AGREEMENT TO OVERFLY OR LAND IN THE UNITED STATES--EXCEPT IN THE CASE OF AIRCRAFT EMERGENCY. ANY TRANSPORTATION PLAN IN WHICH THE ADMINISTRATION WOULD BE WILLING TO COOPERATE PROVIDING FOR SUCH EMERGENCY LANDING SITES WOULD RESTRICT THEM TO REMOTE MILITARY BASES. MOREOVER, THE ADMINISTRATION WILL REQUIRE IN CONNECTION WITH ANY SUCH TRANSPORTATION PLAN PROVIDING FOR EMERGENCY LANDINGS IN THE UNITED STATES THAT CONTAINERS FOR AIR SHIPMENT OF PLUTONIUM COMPLY WITH THE LEGAL STANDARDS FOR TRANSIT OF THE UNITED STATES, INCLUDING THE PROVISIONS OF SECTION 5062 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987 CONCERNING THE DEVELOPMENT AND TESTING OF CASKS FOR TRANSPORTING PLUTONIUM.

- AS CONFIRMED IN THE SIDE LETTERS EXCHANGED IN CONNECTION WITH THE IMPLEMENTING AGREEMENT, THE COOPERATION AND APPROPRIATE ASSISTANCE OF THE UNITED

HFAC

Sen Pell
Sen Helms

SFRC

Sen Cranston
Rep FASCELL
Rep Broomfield
Rep Solarz
Rep Leach**UNCLASSIFIED**

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STATES MUST BE SECURED FOR ANY AIR TRANSPORT OF PLUTONIUM TO JAPAN PURSUANT TO THE IMPLEMENTING AGREEMENT. THE ADMINISTRATION WILL ONLY PROVIDE SUCH COOPERATION AND APPROPRIATE ASSISTANCE IF, AMONG OTHER CONSIDERATIONS, IT IS SATISFIED THAT U.S. NATIONAL SECURITY, NON-PROLIFERATION AND ENVIRONMENTAL INTERESTS AND THE HEALTH AND SAFETY OF THE AMERICAN PEOPLE ARE FULLY PROTECTED.

- THE ADMINISTRATION WILL CONSIDER PROGRAMMATIC SHIPMENT OF PLUTONIUM BY SEA UNDER ADEQUATE PHYSICAL SECURITY PURSUANT TO THE IMPLEMENTING AGREEMENT. SUCH AN ARRANGEMENT WOULD BE TREATED BY THE ADMINISTRATION AS A SUBSEQUENT ARRANGEMENT IN ACCORDANCE WITH SECTION 131 OF THE ATOMIC ENERGY ACT.

- THE ADMINISTRATION WILL KEEP THE CHAIRMAN AND RANKING MINORITY MEMBERS OF THE SENATE FOREIGN RELATIONS COMMITTEE AND THE HOUSE FOREIGN AFFAIRS COMMITTEE APPRISED OF DEVELOPMENTS REGARDING THE CERTIFICATION OF A PLUTONIUM CONTAINER FOR AIR SHIPMENT. THE ADMINISTRATION ALSO WILL INFORM THE CHAIRMEN AND RANKING MINORITY MEMBERS OF THESE COMMITTEES AS TO TRANSPORTATION PLANS FOR AIR OR SEA SHIPMENT AND THEIR IMPLEMENTATION, INCLUDING UNITED STATES COOPERATION AND ASSISTANCE UNDER SUCH PLANS.

SUSPENSION RIGHTS

- PURSUANT TO THE FIRST SENTENCE OF ARTICLE 3(2) OF THE IMPLEMENTING AGREEMENT, THE UNITED STATES HAS THE UNILATERAL AND UNAMBIGUOUS RIGHT TO SUSPEND ITS CONSENT IN ORDER TO PREVENT A SIGNIFICANT INCREASE IN THE RISK OF PROLIFERATION OR THREAT TO ITS NATIONAL SECURITY. THE REMAINDER OF ARTICLE 3 AND PARAGRAPH 7 OF THE AGREED MINUTES TO THE IMPLEMENTING AGREEMENT DOES NOT DETRACT FROM THE RIGHT OF THE UNITED STATES TO MAKE SUCH JUDGMENTS, BUT RATHER AFFIRMS THE NATURE OF THIS RIGHT AND SPECIFIES PROCEDURES WHICH ARE TO BE FOLLOWED IN ITS EXERCISE.

- THE PROVISION THAT SUSPENSION DECISIONS WOULD BE TAKEN IN THE MOST EXTREME CIRCUMSTANCES OF EXCEPTIONAL CONCERN FROM A NON-PROLIFERATION OR NATIONAL SECURITY POINT OF VIEW AND WOULD BE TAKEN AT THE HIGHEST LEVELS OF GOVERNMENT APPROPRIATELY REFLECTS THE SERIOUSNESS WITH WHICH THE UNITED STATES SHOULD APPROACH ANY INVOCATION OF ITS SUSPENSION RIGHTS IN THIS AGREEMENT WITH JAPAN, A CLOSE ALLY WITH EXCELLENT NON-PROLIFERATION CREDENTIALS.

- THE PROVISION STATING THAT THE PARTIES WILL IMPLEMENT THEIR CONSENT RIGHTS TO AVOID HAMPERING, DELAYING OR UNDULY INTERFERING IN THE NUCLEAR ACTIVITIES IN THE TWO COUNTRIES IS EQUIVALENT TO PROVISIONS IN INTERNATIONAL SAFEGUARDS AGREEMENTS AND IS FULLY RECIPROCAL. IT IN NO WAY DIMINISHES THE RIGHT OF THE UNITED STATES TO SUSPEND APPROVAL TO PREVENT A SIGNIFICANT INCREASE IN THE RISK OF PROLIFERATION OR IN THE THREAT TO ITS NATIONAL SECURITY.

- THE LANGUAGE THAT EACH PARTY WILL CAREFULLY CONSIDER THE ECONOMIC EFFECT OF SUSPENSION IN NO WAY INHIBITS THE RIGHT OF THE UNITED STATES TO SUSPEND CONSENT ON NON-PROLIFERATION OR NATIONAL SECURITY GROUNDS. IT IS INTENDED ONLY TO HIGHLIGHT THE SERIOUSNESS OF THIS STEP AND TO ENSURE THAT IT IS NOT UNDERTAKEN SO AS TO

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RISK INFLICTING GRATUITOUS DAMAGE ON ANOTHER NATION'S ECONOMY.

- THE ADMINISTRATION WILL SUSPEND THE APPROVAL GIVEN IN ARTICLE 1 OF THE IMPLEMENTING AGREEMENT PROMPTLY AND TO WHATEVER EXTENT IS REQUIRED TO PREVENT A SIGNIFICANT INCREASE IN THE RISK OF PROLIFERATION OR IN THE THREAT TO NATIONAL SECURITY. THE ADMINISTRATION WILL PROMPTLY REPORT TO THE CHAIRMEN AND THE RANKING MEMBERS OF THE SFRC AND HFAC IF IT CONCLUDES THAT SUCH SUSPENSION IS NECESSARY.

PROGRAMMATIC APPROVALS

- THE UNITED STATES APPROVALS FOR THE USE OF PLUTONIUM PROVIDED IN ARTICLE 1 OF THE IMPLEMENTING AGREEMENT ARE BASED "INTER ALIA" ON THE PREMISE THAT ADEQUATE SAFEGUARDS AND PHYSICAL PROTECTION MEASURES--AS REQUIRED BY THE AGREEMENT AND THE IMPLEMENTING AGREEMENT--ARE BEING APPLIED TO EXISTING FACILITIES AND WILL BE APPLIED TO FUTURE FACILITIES WHEN THEY ARE ADDED TO ANNEX 1 OR 2.

- AS PROVIDED FOR IN THE SAFEGUARDS CONCEPTS (HOUSE DOCUMENT 100-128, P. 98 FF), IN JAPAN'S LETTER ON NON-PROLIFERATION POLICY SUBMITTED TO THE U.S. IN CONNECTION WITH THE AGREEMENT (P. 189 FF) AND IN THE SAFEGUARDS AGREEMENT BETWEEN JAPAN AND THE INTERNATIONAL ATOMIC ENERGY AGENCY IN CONNECTION WITH THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (INFCIRC/255), JAPAN WILL COOPERATE TO ENABLE USE OF THE MOST ADVANCED SAFEGUARDS TECHNOLOGY AVAILABLE FOR SAFEGUARDS ON NUCLEAR MATERIAL SUBJECT TO THE AGREEMENT.

ADDITIONAL STEPS TO APPRISE CONGRESS

IN ORDER TO KEEP CONGRESS INFORMED CONCERNING THE IMPLEMENTATION OF THE AGREEMENT, THE ADMINISTRATION WILL INCLUDE A DESCRIPTION OF THE STATUS OF THE U.S.-JAPAN AGREEMENT IN THE PRESIDENT'S ANNUAL REPORT TO CONGRESS ON NONPROLIFERATION, PURSUANT TO SECTION 601 OF THE NUCLEAR NON-PROLIFERATION ACT OF 1978. THIS DESCRIPTION WILL CONTAIN, AMONG OTHER THINGS, A) AN EXPLANATION OF WHY THE STATUTORY CRITERIA FOR THE APPROVALS FOR REPROCESSING AND RELATED ACTIVITIES GIVEN IN ARTICLE 1 OF THE IMPLEMENTING AGREEMENT CONTINUE TO BE MET, B) A REPORT ON THE STATUS OF FUTURE FACILITIES WHICH ARE INTENDED TO BE PLACED ON ANNEXES 1 AND 2, AND C) THE STATUS OF THE DEVELOPMENT OF SAFEGUARDS TECHNOLOGY AND SAFEGUARDS TECHNIQUES TO BE APPLIED IN SUCH FACILITIES, WITH PARTICULAR ATTENTION TO THE EXPECTED CAPABILITIES OF NUCLEAR MATERIAL ACCOUNTING.

FUTURE FACILITIES

WITHIN 45 DAYS OF RECEIVING THE NOTIFICATION FROM THE GOVERNMENT OF JAPAN REQUIRED BY ARTICLE 2 OF THE IMPLEMENTING AGREEMENT AND PARAGRAPH 5 OF THE AGREED MINUTES THERETO CONCERNING THE ADDITION OF A FACILITY TO ANNEX 1 OR 2, THE ADMINISTRATION WILL INFORM THE CHAIRMEN AND RANKING MEMBERS OF THE SFRC AND HFAC OF THE NOTIFICATION AND WILL PROVIDE A REPORT (CLASSIFIED IF NECESSARY) CONTAINING A DESCRIPTION OF THE SAFEGUARDS TO BE APPLIED AND ANY OTHER FACTS RELEVANT

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TO THE CONCLUSION THAT THE USE OF NUCLEAR MATERIAL SUBJECT TO THE AGREEMENT AT THAT FACILITY WILL NOT RESULT IN A SIGNIFICANT INCREASE IN THE RISK OF PROLIFERATION OR BE INIMICAL TO THE COMMON DEFENSE AND SECURITY OF THE UNITED STATES.

WHENEVER SAFEGUARDS MEASURES ARE ADOPTED OR MODIFIED IN ACCORDANCE WITH ARTICLE 2(4) OF THE IMPLEMENTING AGREEMENT, THE ADMINISTRATION WILL PROCESS THESE ACTIONS AS SUBSEQUENT ARRANGEMENTS IN ACCORDANCE WITH SECTION 131 OF THE ATOMIC ENERGY ACT.

OTHER MATTERS

THE ENTRY-INTO-FORCE OF THE AGREEMENT DOES NOT OBLIGE THE UNITED STATES TO GRANT ANY OTHER COUNTRY OR ANY GROUP OF COUNTRIES TREATMENT EQUAL TO OR BETTER THAN THAT PROVIDED TO JAPAN IN THE AGREEMENT.

THE ADMINISTRATION WILL NOT APPROVE ANY SUBSTITUTION FOR, "SWAPPING" OF, OR OTHER DISPOSITION OF NUCLEAR MATERIAL SUBJECT TO THE AGREEMENT WHICH WOULD UNDERMINE U.S. NON-PROLIFERATION OR NATIONAL SECURITY OBJECTIVES.

SINCERELY/JOHN C. WHITEHEAD/ACTING SECRETARY

3. THE FOLLOWING LETTER WAS SENT ON MAY 30 BY AMBASSADOR RICHARD KENNEDY TO MINISTER TETSUYA ENDO CONCERNING TRANSPORTATION OF PLUTONIUM FROM EUROPE TO JAPAN (NOTE: CORRESPONDING LETTER FROM ENDO TO KENNEDY CAME THROUGH U.S. EMBASSY):

EXCELLENCY:

I HAVE THE HONOR TO REFER TO SUB-PARAGRAPH (A) (III) OF PARAGRAPH 3 OF ARTICLE 1 OF THE IMPLEMENTING AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAPAN PURSUANT TO ARTICLE 11 OF THEIR AGREEMENT FOR COOPERATION CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, AND TO ANNEX 5 OF THE IMPLEMENTING AGREEMENT, ENTITLED "GUIDELINES FOR THE INTERNATIONAL TRANSPORTATION OF RECOVERED PLUTONIUM."

I HAVE FURTHER THE HONOR TO RECALL THAT, DURING THE NEGOTIATION OF THESE PROVISIONS, IT WAS CONFIRMED THAT THE COOPERATION AND APPROPRIATE ASSISTANCE OF THE UNITED STATES MUST BE SECURED PRIOR TO EACH SHIPMENT IN ORDER TO FULFILL THE GUIDELINES SET FORTH IN ANNEX 5.

I WISH TO RECONFIRM THE COMMITMENT OF THE GOVERNMENT OF THE UNITED STATES, EMPHASIZED DURING THE NEGOTIATION OF THE ABOVE-MENTIONED PROVISIONS, TO COOPERATE CLOSELY AND IN GOOD FAITH TO FACILITATE THE RETURN OF RECOVERED PLUTONIUM FROM EURATOM TO JAPAN ON A PREDICTABLE AND RELIABLE BASIS WITHIN THE FRAMEWORK OF SUB-PARAGRAPH (A) (III) OF PARAGRAPH 3 OF ARTICLE 1 OF THE IMPLEMENTING AGREEMENT AND ANNEX 5 OF THE IMPLEMENTING AGREEMENT.

I WISH TO INFORM YOU THAT IN THE INTEREST OF SUPPORTING IMPLEMENTATION OF TRANSPORTATION PLANS FOR THE RETURN OF SUCH PLUTONIUM TO JAPAN, THE GOVERNMENT OF THE UNITED STATES HAS RECENTLY COMPLETED A STUDY OF POSSIBLE AIR ROUTES THAT MIGHT BE UNDERTAKEN IN ACCORDANCE WITH ANNEX 5 OF THE IMPLEMENTING

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AGREEMENT. AS A RESULT OF THIS STUDY THE GOVERNMENT OF THE UNITED STATES HAS DETERMINED THAT, WITHIN THE NEAR FUTURE, THERE WILL BE AIRCRAFT CAPABLE OF TRANSPORTING PLUTONIUM FROM EUROPE TO JAPAN NON-STOP, USING A POLAR ROUTE THAT WOULD NOT REQUIRE OVERFLIGHTS OF THE UNITED STATES, CANADA OR ANY OTHER COUNTRY BETWEEN EURATOM AND JAPAN. MY GOVERNMENT BELIEVES THAT SUCH ROUTING WILL SERVE THE BEST INTERESTS OF BOTH THE UNITED STATES AND JAPAN. ACCORDINGLY, THE GOVERNMENT OF THE UNITED STATES HAS CONCLUDED THAT ITS COOPERATION AND ASSISTANCE FOR TRANSFERS OF PLUTONIUM FROM EURATOM TO JAPAN PURSUANT TO ANNEX 5 OF THE IMPLEMENTING AGREEMENT WILL BE PROVIDED ONLY FOR ROUTES WHICH DO NOT REQUIRE OVERFLIGHTS OF OR REFUELING IN THE UNITED STATES. I WISH TO CONFIRM THAT THE FOREGOING CONCLUSION PERTAINS TO THE IMPLEMENTATION OF ANNEX 5 OF THE IMPLEMENTING AGREEMENT, AND WILL NOT REQUIRE ANY AMENDMENT TO OR MODIFICATION OF THE IMPLEMENTING AGREEMENT.

SHOULD THE AFOREMENTIONED POLAR ROUTE BE INCLUDED IN A PROPOSED TRANSPORTATION PLAN, I WISH TO CONFIRM THAT THE UNITED STATES IS PREPARED TO PROVIDE NAVIGATIONAL ASSISTANCE FROM ITS GROUND STATIONS IN ALASKA, TO MAKE AVAILABLE APPROPRIATE CONTINGENT LANDING SITES IN THE UNITED STATES AT REMOTE MILITARY BASES DESIGNATED BY THE GOVERNMENT OF THE UNITED STATES IN THE EVENT OF AIRCRAFT EMERGENCIES AND TO PROVIDE OTHER APPROPRIATE ASSISTANCE AS MAY BE MUTUALLY ACCEPTABLE FOR THE SAFE AND SECURE RETURN OF PLUTONIUM FROM EURATOM TO JAPAN.

FINALLY, I WISH TO NOTE THAT THE GOVERNMENT OF THE UNITED STATES IS ALSO REVIEWING OTHER POTENTIAL AIR ROUTES WHICH WOULD NOT REQUIRE OVERFLIGHTS OF OR REFUELING IN THE UNITED STATES AND IS PREPARED TO CONSULT WITH THE GOVERNMENT OF JAPAN AND THE SENDER, RECIPIENT AND CARRIER TO DETERMINE THE FEASIBILITY OF SUCH ALTERNATE AIR ROUTES UNDER ADEQUATE PHYSICAL PROTECTION.

I ALSO WISH TO CONFIRM THAT, IN ORDER TO SUPPORT THE RETURN OF PLUTONIUM FROM EURATOM TO JAPAN, THE GOVERNMENT OF THE UNITED STATES IS PREPARED TO BEGIN CONSULTATIONS WITH THE GOVERNMENT OF JAPAN CONCERNING THE FEASIBILITY OF THE ALTERNATIVE OF SEA SHIPMENT ON A LONG TERM, PROGRAMMATIC BASIS UNDER CONDITIONS THAT WILL ENSURE ADEQUATE PHYSICAL PROTECTION FOR ALL ASPECTS OF THE TRANSPORTATION PROCESS.

ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION.

SINCERELY/RICHARD T. KENNEDY
WALLIS

END OF MESSAGE

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